United States Court of Appeals

for the Second Circuit

PETITIONER'S BRIEF

No. 74-1940

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

ROCHESTER MUSICIANS ASSOCIATION LOCAL 66,
AFFILIATED WITH THE AMERICAN
FEDERATION OF MUSICIANS,
Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

PETER G. NASH,
General Counsel,

JOHN S. IRVING,
Deputy General Counsel,

PATRICK HARDIN,
Associate General Counsel,

ELLIOTT MOORE,
Deputy Associate General Counsel,

National Labor Relations Board.

ALLISON W. BROWN, JR.,
STEPHEN D. QUINN,
Attorneys,

National Labor Relations Board
Washington, D.C. 20570

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

INDEX

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BRIEF FOR
THE NATIONAL LABOR RELATIONS BOARD

STATEMENT OF THE ISSUES PRESENTED

1. Whether the Board properly found that the Union violated Section 8(b)(1)(B) of the Act by restraining and coercing the employer in the selection of its representative for the purposes of collective bargaining and adjustment of grievances.

2. Whether the Board's remedial order is valid and proper.

STATEMENT OF THE CASE

This case is before the Court upon the application of the National Labor Relations Board pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 159, 29 U.S.C. Sec. 151 et seq.) for enforcement of its order, (A. 28)[1] issued November 29, 1973, against Rochester Musicians Association Local 66, American Federation of Musicians (hereinafter "the Union"). The Board's Decision and Order (per Members Jenkins, Kennedy and Penello) are reported at 207 NLRB No. 110. This Court has jurisdiction in the proceeding, the unfair practices having occurred at Rochester, New York.

I. THE BOARD'S FINDINGS OF FACT

The Rochester Civic Music Association, Inc., (hereinafter "the Association" or "the employer"), is the managing agent for the Rochester Philharmonic Orchestra. On September 24, 1971, the Association entered into a collective bargaining agreement with the Union effective until August 31, 1972 (GCX 2). Dr. Samuel Jones is conductor of the Orchestra and is admittedly a "supervisor" within the meaning of Section 2(11) of the Act (A. 5, 15; 52).[2] He is also a member of the Union (A. 5; 44).

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[1] "A." references are to the printed Appendix. References preceding a semicolon are to the Board's findings; those following are to supporting evidence. "GCX" refers to General Counsel's Exhibits.

[2] Section 2(11) provides:

> The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

On January 27, 1972, Dr. Jones made a recommendation to the Association that the contracts of four members of the orchestra not be renewed at the conclusion of the 1972-73 season, and that another member be placed on probation, all based on Dr. Jones' judgment that these musicians were "incompetent musically" (A. 5; 33).[3]

On February 28, 1972 Dr. Jones received a letter from the Union advising that charges had been lodged against him, including *inter alia*, a charge that he had violated a provision of the Union constitution by making his recommendation regarding the five unit employees without first submitting the matter to the Union for prior review by one of its committees. The letter notified Dr. Jones to appear before the Executive Board of the Union on March 6 (A. 6; 55, 32-34). On March 6, Dr. Jones appeared before the Union's Executive Board concerning the charges at which time he was also presented with additional charges. At Dr. Jones' request, the hearing was then postponed. (A. 6; 44). About August 21, Dr. Jones was tried *in absentia* by the Union's Executive Board. At that time the Union found Dr. Jones guilty of violating its constitution by recommending that employees Tatian, Jones, Taylor and Wise be dismissed and that employee Secon be placed on probation. Accordingly, the Executive Board imposed a $1000 fine and a 6 months' suspension from union membership (A. 7; 44, 39). Later, on October 16, the Union's

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[3] Paragraph 37 of the collective bargaining agreement between the Association and the Union provided (A. 31):

> Each regular member of the Orchestra who has been engaged for more than one (1) season shall be notified of the Association's intention to release him on or before February 1. On said date the General Manager will submit to the Union and the members involved all such requests that have been made by the conductor and/or music adviser and/or Association for changes in personnel, together with the conductor's and/or music adviser's and/or Association's and the personnel manager's observations . . .

Executive Board, acting on its own motion to reconsider Dr. Jones' case, rescinded the suspension from membership and reduced the fine from $1000 to $250. By letter dated October 27, Dr. Jones was notified of the Executive Board's finding that he violated the Union's constitution by making the recommendations regarding the five orchestra members. The letter informed Dr. Jones that he would be suspended from membership if he failed to pay the fine within ten days from receipt of the letter (A. 8; 44, 40).

II. THE BOARD'S CONCLUSION AND ORDER

On the foregoing facts, the Board concluded that the Association violated Section 8(b)(1)(B) of the Act by disciplining Dr. Jones, conductor of the orchestra and member of the Union, for recommending that four musicians be terminated and that one musician be placed on probation. The Board found that by trying and disciplining Dr. Jones, the Union coerced and restrained the Association in the selection of its representatives for the purposes of collective bargaining and the adjustment of grievances (A. 18).

The Board's order requires the Union to cease and desist from engaging in the unfair labor practice found, and from in any like or related manner restraining or coercing the Association in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances. Affirmatively, the order requires the Union to expunge all record of the disciplinary proceedings and action taken against Dr. Jones, to rescind all fines levied against Dr. Jones, and to refund to him any money paid to the Union as a result of any such fine, together with interest at the rate of 6 percent per annum. The Board's order further requires the Union to notify Dr. Jones, in writing, that the Union

has taken the aforesaid remedial action, to post appropriate notices and to cause the Board's notice to be published in a conspicuous place in the official monthly journal of the American Federation of Musicians. (A. 23-24).

ARGUMENT

I. THE BOARD PROPERLY FOUND THAT THE UNION VIOLATED SECTION 8(b)(1)(B) OF THE ACT BY RESTRAINING AND COERCING THE EMPLOYER IN THE SELECTION OF ITS REPRESENTATIVE FOR THE PURPOSES OF COLLECTIVE BARGAINING AND ADJUSTMENT OF GRIEVANCES

A. The Board's Findings and Conclusions are Valid

Section 8(b)(1)(B) of the Act provides that it shall be an unfair labor practice for a labor organization or its agents "to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." This provision has been construed as barring not only direct pressure upon an employer to replace his chosen collective bargaining or grievance adjustment representative (*General Electric Co. v. N.L.R.B.*, 412 F.2d 512, 516-517 (C.A. 2, 1969)), but also indirect pressure resulting from union discipline of a member who is a supervisor with collective bargaining or grievance adjustment duties for the manner in which he performs those duties. Such discipline, in the Board view, tends to make the disciplined supervisor "subservient" to the union's will and, hence, less loyal to the employer in any future decisions relating to collective bargaining or grievance adjustment. *San Francisco – Oakland Mailers' Union No. 18,* 172 NLRB 2173. As a result, the employer would have to replace that supervisor "or face *de facto* nonrepresentation" by him. *Id.* at 2173.

The Supreme Court in the recently decided *Florida Power & Light Co. v. N.L.R.B.*, 94 S. Ct. 2737, 2745 (June 24, 1974) upheld the doctrine that a union violates Section 8(b)(1)(B) by disciplining a member who is a supervisor when "that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." At issue in *Florida Power* was whether the Board had properly held that a union violated Section 8(b)(1)(B) when it disciplined supervisor members for crossing a picket line during an economic strike and performing rank-and-file struck work. On the basis of the facts there presented, the Court held that the union did not violate Section 8(b)(1)(B), because when the supervisors performed rank-and-file struck work behind the picket lines they "were not engaged in collective bargaining or grievance adjustment, or in any activities related thereto." 94 S. Ct. at 2745.

In contrast, the record of this case shows that when Dr. Jones exercised his supervisory authority to recommend the termination of four members of the Orchestra and that a fifth member be placed on probation he did so because of his dissatisfaction with their professional competence. The very nature of Dr. Jones' position as conductor of the orchestra required him to make judgments and to take actions which were bound to affect the tenure as well as the conditions of employment of musicians in the orchestra. Since the terms and conditions of employment of the musicians were spelled out in detail in the collective bargaining agreement between the Association and the Union, it is clear that a major part of Dr. Jones' responsibility as a supervisor required him to act as the Association's representative in the day-to-day administration of the agreement. In short, his role, to use the Supreme Court's

terminology, was that of "grievance adjuster or collective bargainer on behalf of the employer." *Florida Power, supra,* 94 S. Ct. at 2745.[4]

The specific charge brought by the Union against Dr. Jones was that he violated a provision of the Union constitution by making a recommendation to the Association concerning the continued tenure of the five musicians without submitting his recommendation for prior review by a committee of the Union (A. 33, 37). Thus, notwithstanding the specific language of Paragraph 37 of the collective bargaining agreement (*supra,* p. 3) which recognized Dr. Jones' authority to recommend changes in the orchestra's composition, the Union asserted the right to review any such recommendations before they were made. A case decided by the Board subsequent to the Supreme Court's *Florida Power* decision presented facts similar to those existing here. In *Teamsters Local 524 (Yakima County Beverage Co.)*, 212 NLRB No. 133 (1974), 84 LRRM 1008, the union fined member-supervisors for the purpose of forcing them to observe the terms of the applicable collective bargaining agreement which the union claimed they had violated by performing certain work outside the regular working day. The Board, relying on its *San Francisco – Oakland Mailers' Union* decision, *supra,* as construed by the Supreme Court in *Florida Power*, held that the union violated Section 8(b)(1)(B) by fining the supervisors "in an attempt to impose [its] interpretation of the collective bargaining contract on them and thus impede the Employer's control over them." 87 LRRM at 1009. Clearly, the rationale of the *Teamsters Local 524* case is applicable here. By disciplining and fining Dr. Jones because he failed to submit for prior union review his recommendations

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[4] See also, *Newspaper Guild, Erie Newspaper Guild, Local 187 v. N.L.R.B.*, 489 F.2d 416, 420-422 (C.A. 3, 1973). "[C]ollective bargaining is a continuing process which . . . 'involves day to day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by contract.' *Conley v. Gibson*, 355 U.S. 41, 46 (1957)" *J.I. Case Co. v. N.L.R.B.*, 253 F.2d 149, 153 (C.A. 7, 1958).

for changes in the orchestra's personnel, notwithstanding the fact that there was no contractual requirement for such review, the Union sought to impose its interpretation of the agreement on Dr. Jones and thus impede the Association's control over him.

For the reasons stated, we submit that the Board's finding that the Union violated Section 8(b)(1)(B) of the Act is fully supported by the evidence and should be affirmed by the Court.

B. The Union's Procedural Defenses Are Without Merit

1. Section 10(b) defense

Before the Board the Union contended that this case was barred by Section 10(b) of the Act which prohibits any complaint from issuing that is not based on an unfair labor practice occurring within six months from the filing of the charge with the Board. As we show below, the Union's contention is without substance and was properly rejected by the Board.

The Charge in this case (Board Case No. 3-CB-1939), alleging that the Union had violated Section 8(b)(1)(B) of the Act "since on or about August 21, 1972, and at all times thereafter," was filed with the Board on August 28, 1972 (A. 29-30). Although Dr. Jones received the initial notice of the intra-union charges against him on February 28, 1972, the Union's hearing on those charges was not conducted until August 21, 1972, at which time Dr. Jones was found guilty of violating the Union constitution, and a penalty was imposed consisting of $1000 fine and 6 months' suspension from membership (*supra*, p. 3). Since the Union's conduct – the trial and disciplining of Dr. Jones – which formed the basis for the unfair labor practice charge occurred only 7 days prior to the filing of the charge, it is too obvious to require extended discussion

that the complaint was not time-barred. See, *New York District Council No. 9, International Brotherhood of Painters v. N.L.R.B.*, 453 F.2d 783, 786 (C.A. 2, 1971), cert. denied, 408 U.S. 930; *N.L.R.B. v. Local 210, International Brotherhood of Teamsters*, 330 F.2d 46 (C.A. 2, 1964). Moreover, as shown *supra* p. 4, in October the Executive Board reaffirmed the guilty finding against Dr. Jones and reduced his fine to $250. Since those events occurred two months after the charge was filed, they obviously were not barred by the limitation period.[5]

2. The Board's assertion of jurisdiction over symphony orchestras

The Union argued before the Board that it was prejudiced to the point of being denied due process by the fact that the Board first asserted jurisdiction over symphony orchestras after the Union had commenced its disciplinary proceeding against Dr. Jones, and that the application of the statute to it was retroactive and hence improper. The Union's argument, as we show below, was properly found by the Board to be without merit.

As grounds for its argument the Union relies on the following facts: On March 20, 1972, after receiving notice of the intra-union charges against him, Dr. Jones filed an unfair labor practice charge with the Board alleging that the Union had violated Section 8(b)(1)(B) of the Act (Board Case No. 3-CB-1828)(A. 7). On March 23, the Regional Director refused to issue a complaint on the basis of the charge, and his action was affirmed by General Counsel on August 9. The ground for the dismissal of the charge was that the Board, under its jurisdictional standards then in effect, did not exercise jurisdiction over non-profit symphony

[5] The Board was entitled to include in the complaint allegations concerning any unfair labor practices related to those alleged in the charge and which grew out of them while the proceeding was pending before the Board. *N.L.R.B. v. Fant Milling Co.*, 360 U.S. 301, 309 (1959).

orchestras.[6] On August 19, 1973, the Board caused to be published in the Federal Register a notice of a rule-making proceeding for consideration of the promulgation of a proposed rule for the Board's exercise of jurisdiction over symphony orchestras meeting certain monetary standards. 37 Fed. Reg. 16813. The notice stated that it was the Board's intention to apply any rule that might be adopted to all proceedings pending at the time of the rule's adoption, as well as all proceedings arising thereafter. Two days later, on August 21, the Union's Executive Board proceeded to conduct its trial of Dr. Jones *in absentia*. He was found guilty of violating the Union's constitution and a fine of $1000 and 6 months' suspension of membership were imposed. Two months later, on August 27, Dr. Jones was notified of the Executive Board's findings against him and that the discipline finally imposed was a $250 fine which had to be paid within 10 days or he would be suspended from membership. On August 28, the charge in the instant case was filed with the Board by Dr. Jones. Thereafter, on March 2, 1973, the Board issued a rule effective as of March 7, 1973, asserting jurisdiction over symphony orchestras meeting certain monetary standards. 38 Fed. Reg. 6176, 29 CFR Sec. 103.2. This rule expressly stated that it applied to Board proceedings then pending and those instituted in the future. The complaint herein was issued on May 17, 1973.

Section 10(a) of the Act provides that "The Board is empowered . . . to prevent any person from engaging in any unfair labor practice . . . affecting commerce."[7] It is well settled that the Board has discretionary

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[6] This policy was reaffirmed by the Board on July 31, 1973 in an advisory opinion issued in response to a petition filed on May 1 by the Association. *Rochester Civic Music Association*, 198 NLRB No. 75, 80 LRRM 1752 (1972).

[7] The Union does not contest the Board's determination that the Association's business affects commerce within the meaning of Section 2(7) of the Act.

authority to exercise or decline to exercise the full measure of its legal jurisdiction. *N.L.R.B. v. Denver Bldg. & Const. Trades Council*, 341 U.S. 675, 684 (1951); *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 3-4 (1957). It is clear, however, that the Board's self-imposed jurisdictional standards are not immutable, and where statutory jurisdiction exists, the Board may properly assert that jurisdiction if to do so will effectuate the purpose of the Act. *N.L.R.B. v. Pease Oil Co.*, 279 F.2d 135, 137 (C.A. 2, 1960). The general rule is that, where the Board has statutory jurisdiction, as it has in this case, whether such jurisdiction should be exercised is for the Board, not the courts, to determine. The Board's exercise of its discretion in such matters will not be disturbed unless it "was contrary to the intent of Congress, was arbitrary, [or] was beyond its power." *Office Employees International Union v. N.L.R.B.*, 353 U.S. 313, 320 (1957). Accord: *Pedersen v. N.L.R.B.*, 234 F.2d 417, 419 (C.A. 2, 1956). The Board, we submit, did not act arbitrarily or abuse its discretion by asserting jurisdiction in this case.

Initially, it should be noted that the Union errs in its assertion that the Act was retroactively applied to cover its conduct at issue herein. Thus, as shown above, the Board's notice of proposed rule making in which the Board indicated its intention to exercise jurisdiction over symphony orchestras was published in the Federal Register on July 19, 1972. Notwithstanding this notice in the official Government publication provided for such purpose, the Union proceeded two days later with the trial of Dr. Jones, and two months later, in October, its Executive Board took further action affirming its earlier decision to discipline him. On August 27, the Board warned Dr. Jones that he would be suspended from the Union if he did not pay the $250 fine within 10 days. Although the Union claims that it proceeded to impose disciplinary penalties on Dr. Jones in reliance on the Board's dismissal of his earlier charges, this claim lacks merit, since

it is clear that the Union acted at its own risk, first in August and two months later in October, by pursuing the disciplinary action in the face of the Board's published notice of its intention to assert jurisdiction over symphony orchestras.

Even if it were assumed that the publication of the Board's notice of proposed rule making did not serve as notice to the Union of the Board's jurisdictional intentions with respect to symphony orchestras, the Union's claim of prejudice must fail for the additional reason that the Board's handling of this case accords with judicial authority. Thus, the Union's assertion is that the Board's new jurisdictional rule affecting symphony orchestras which went into effect on March 7, 1973, should not have been construed to cover the Union's conduct which occurred the previous August. However, Dr. Jones' charge which was filed on August 28 was still pending on March 7, 1973 when the new jurisdictional rule became effective. In accordance with its practice in the past when it has adopted new jurisdictional standards, the Board specifically provided in this instance that the rule was applicable to pending cases as well as those filed in the future. When the Board revises its standards for asserting jurisdiction, as it has done from time to time, it normally applies the new standards to all cases then pending before it as well as to future cases. See *Lakeland Convalescent Center, Inc.*, 173 NLRB 97 (1968); *Siemons Mailing Service*, 122 NLRB 81, 84 (1958); *Wemyss d/b/a Coca-Cola Bottling Company of Stockton*, 110 NLRB 840, 843 (1954). As the Board stated in the *Siemons* case (*supra*, at 84-85):

> . . . the Board does not believe that the mere fact that a respondent has reason to believe by virtue of the Board's announced jurisdictional policies that the Board would not assert jurisdiction over it, gave it any legal, moral, or equitable right to violate the provisions of the Act. . . . This is especially true since the issuance of the *Guss* decision

> [*Guss v. Utah Labor Relations Board, supra,* 353 U.S. 1], which eliminated all possible basis for believing that in such circumstances the provisions of the Act did not apply, or that State law would or could apply to its conduct. In the final analysis what is conclusive with us is the fact that any other policy would benefit the party whose actions transgressed the provisions of the Act at the expense of the victim of such actions and of the public policy.

In *N.L.R.B. v. Pease Oil Co., supra,* 279 F.2d 135 this Court approved procedures such as those followed here for enlargement of the Board's jurisdictional standards. As the Court there pointed out, the mere fact that the Board does not exercise its full statutory jurisdiction is not a license to a party subject to the Act to disregard its prohibitions. In that case, as here, the respondent in a Board proceeding asserted as a defense to conduct alleged to be unlawful that it had acted in reliance on the Board's existing jurisdictional standards which excluded an employer as small as the respondent, even though its business admittedly was subject to the Board's statutory jurisdiction. As the Court stated (279 F.2d at 137):

> [R]espondent's "reliance" was simply an expectation that it might pursue whatever labor policy it saw fit, safe from any Board interference no matter how many violations of the Act it might commit. We have no hesitation in disappointing this expectation.
>
> An Act of Congress imposes a duty of obedience unrelated to the threat of punishment for disobedience.

The *Pease Oil* case, we submit, is on all fours with the case at bar, and there is no reason why it should not control here.[8]

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[8] Before the Board, the Union suggested as a further defense herein that internal union remedies were available to Dr. Jones, and that they should have been utilized

(Continued)

II. THE BOARD'S ORDER IS VALID AND PROPER

The Union has objected to the provision of the Board's order which requires the Union to publish the Board's notice that is included as part of the order in the monthly journal of the American Federation of Musicians. The Board explained that this provision was included in its order because of "the peripatetic nature of a symphony orchestra conductor's career," which requires him to make appearances in various parts of the country, and so that members of other locals of the American Federation of Musicians would be informed that Dr. Jones is not *persona non grata* with the Rochester local (A. 21-22).[9] We show below that the Board's order is fully valid and appropriate in the circumstances.

Section 10(c) of the Act empowers the Board, upon finding that an unfair labor practice has been committed, to order the violator to cease and desist and "to take such affirmative action * * * as will effectuate the policies of [the] Act." This section "charges the Board with the task of devising remedies" to accomplish the Act's purposes. *N.L.R.B. v. Seven-Up Bottling Co.*, 344 U.S. 344, 346 (1953). "In fashioning its remedies

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[8] (Continued) to resolve his dispute with the Union, rather than the processes of the Board. Citing *Collyer Insulated Wire*, 192 NLRB 837 (1971), the Union asserted that the Board should not have decided the issues herein, but should have deferred to the union remedies. Aside from the fact that there is no evidence in the record as to what internal remedies the Union has reference to, its reliance on the so-called *Collyer* doctrine is completely misplaced. That doctrine is only applicable where there are contractually agreed to arbitration provisions which provide the means for resolving the dispute that is the basis for the unfair labor practice charge. See *Houston Mailers Union No. 36*, 199 NLRB No. 69, 81 LRRM 1310 (1972); *Baltimore Typographical Union No. 12*, 201 NLRB 120 (1973); *Columbia Typographical Union No. 101*, 207 NLRB No. 123, 85 LRRM 1018 (1973). Here there is no arbitration provision in the collective bargaining agreement between the Association and the Union.

[9] The Board recognized the possibility that the only way the notice could be published in the monthly journal, *International Musician*, might be through a paid advertisement (A. 22).

under the broad provisions of Section 10(c) . . . the Board draws on a fund of knowledge and expertise all its own, and its choice of remedy must therefore be given special respect by reviewing courts." *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 612, n. 32 (1968); see, also, *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203, 216 (1964). The Board's remedy thus may not be disturbed "unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act." *Virginia Electric & Power Co. v. N.L.R.B.*, 319 U.S. 533, 540 (1943). This special deference to the Board's choice of a remedy reflects congressional recognition of the fact that "the ultimate problem is the balancing of the conflicting legitimate interests. The function of striking the balance to effectuate national labor policy is often a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board, subject to limited judicial review." *Golden State Bottling Co. v. N.L.R.B.*, 414 U.S. 168, 181 (1973), quoting from *N.L.R.B. v. Truck Drivers Union, Local 449*, 353 U.S. 87, 96 (1957).

The publication provision included in the Board's order has the salutory objective of fully restoring Dr. Jones to his rightful status as a member in good standing of the union representing his profession. Not many symphonic musicians would be likely to see a notice posted only at the Union's headquarters, so the requirement that there be publication in the international union's official monthly journal is not unreasonable. In this way members of any orchestra in another part of the country where Dr. Jones might make an appearance will be apprised of the fact that the disciplinary action taken against Dr. Jones was unlawful, and that the Board has provided a remedy for this violation of his statutory rights. The courts have long recognized the Board's authority to fashion its orders in a manner, as it has here, that will assure that their contents are

communicated to all employees whose rights are affected. Communication to employees of the contents of Board notices by means other than posting has been recognized by this and other courts as a proper means of eliminating the coercive impact of unfair labor practices. See, *N.L.R.B. v. Local 294 International Brotherhood of Teamsters*, 470 F.2d 57, 63-64 (C.A. 2, 1972); *Textile Workers Union v. N.L.R.B.*, 388 F.2d 896, 903-905 (C.A. 2, 1967), cert. denied, 393 U.S. 836; *International Union of Operating Engineers, Local 825*, 173 NLRB 955, 955 n. 1 (1968), enforced, 420 F.2d 961 (C.A. 3, 1970); *J.P. Stevens & Co. v. N.L.R.B.*, 461 F.2d 490, 495 (C.A. 4, 1972); *Texas Gulf Sulphur Co. v. N.L.R.B.*, 463 F.2d 778, 779 (C.A. 5, 1972); *Decaturville Sportswear Co. v. N.L.R.B.*, 406 F.2d 886, 889 (C.A. 6, 1969); *Marine Welding & Repair Works v. N.L.R.B.*, 439 F.2d 395, 399 (C.A. 8, 1971).

CONCLUSION

For the foregoing reasons, we respectfully request that the Board's order be enforced in full.

ALLISON W. BROWN, JR.,
STEPHEN D. QUINN,
Attorneys,
National Labor Relations Board.
Washington, D.C. 20570

PETER G. NASH,
General Counsel,
JOHN S. IRVING,
Deputy General Counsel,
PATRICK HARDIN,
Associate General Counsel,
ELLIOTT MOORE,
Deputy Associate General Counsel,
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October 1974.

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	)	
Respondent.	)	

CERTIFICATE OF SERVICE

The undersigned certifies that three (3) copies of the Board's offset printed brief in the above-captioned case have this day been served by first class mail upon the following counsel at the addresses listed below:

Charles Peterson, Treasurer,
34 Metropolitan Oval
New York, New York 10463

Van Arkel & Kaiser
Att: Ronald Rosenberg, Esq.
1828 L Street, N. W.
Washington, D. C.

Salzman, Salzman and Lipson
Att: Sidney J. Salzman, Esq.
600 Executive Office Bldg.
36 Main St., West
Rochester, New York 146149

/s/ Elliott Moore
Elliott Moore
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.

this 30th day of October, 1974